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FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Public Notice

Biennial Review 2000
Staff Report Released

)
)
) CC Docket No. 00-175
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) FCC 00-346
)

**COMMENTS OF THE INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE**

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Summary

ITTA applauds the Commission's efforts to perform a comprehensive review of its rules in this inaugural Biennial Review of the new millennium. ITTA also enthusiastically supports the Staff Report's recommendation that the Commission redouble its efforts to ensure appropriate accommodations for small telephone companies. ITTA remains concerned, however, that the small amount of meaningful relief the Staff Report proposes for midsize and small telephone companies is inadequate. ITTA is concerned that, absent substantial regulatory relief for midsize carriers, its members will continue to face long regulatory delays while the Commission attends to these other regulatory proceedings.

ITTA specifically supports the Staff Report's recommendation that the Commission undertake further reform of its accounting and reporting requirements contained in Parts 43 and 64, and looks forward to continuing to work with the Commission on this important issue. In addition to the rules targeted for review in the Staff Report, ITTA proposes that the Commission streamline and update its accounting and reporting rules, its separate affiliate rules, as they apply to midsize carriers, its subscriber carrier selection, or "slamming" rules to the extent they apply to the purchase or sale of exchanges, its rate regulation and tariffing rules as they apply to rate-of-return carriers, and its universal service rules, as they apply to rural carriers.

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**COMMENTS OF THE INDEPENDENT TELEPHONE &
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The Independent Telephone & Telecommunications Alliance ("ITTA") hereby submits the following comments in response to the Commission's release of the Biennial Review 2000 Staff Report (the Staff Report).¹ The Staff Report summarizes the Commission staff's recommendations for the Commission's upcoming Year 2000 biennial review of its rules under section 11 of the Communications Act of 1934, as amended.²

ITTA is an organization of midsize incumbent LECs each serving fewer than two percent of the nation's access lines. ITTA members collectively serve over eight million access lines in 41 states and offer a diversified range of services to their customers. ITTA's smallest member company serves just under 100,000 access lines, while its largest serves just over two million. While most ITTA members are regulated by the Commission under rate-of-return regulation, several, such as Cincinnati Bell Telephone Company, Citizens Communications, and Valor Telecommunications Southwest, LLC, have elected price cap regulation. Similarly, most, but not all, qualify as rural telephone companies within the meaning of Section 3(37) of the Communications Act of 1934, as amended, 47 U.S.C. § 153(37).

¹ Public Notice, CC Docket No. 00-175, *Biennial Review 2000 Staff Report Released*, FCC 00-346 (rel. Sept. 19, 2000).

² 47 U.S.C. § 161.

I. Introduction and Summary

Section 11 requires the Commission, in every even-numbered year, to “review all regulations issued under this Act in effect at the time of review that apply to the operations or activities of any provider of telecommunications service” and to “determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition between providers of such services.”³ If the Commission makes such a determination, it must repeal or modify the regulation.⁴

With this standard in mind, ITTA applauds the Commission's efforts to perform a comprehensive review of its rules in this inaugural Biennial Review of the new millennium. ITTA also enthusiastically supports the Staff Report's recommendation that the Commission “redouble its efforts to ensure appropriate accommodations for small telephone companies.”⁵ For too long, midsize companies in particular have been lumped together with larger companies and subjected to regulations tailored for carriers many times their size. Recently, the United States House of Representatives also took action based on its finding that the Commission's rules place too great a burden on the Nation's small and midsize telephone companies, diverting much-needed resources from these carriers' efforts to launch competitive ventures and deploy broadband data facilities.⁶

ITTA remains concerned, however, that the small amount of meaningful relief the Staff Report proposes for midsize and small telephone companies is inadequate, especially in light of growing competition in markets served by these carriers, and the strain already being

³ 47 U.S.C. § 161(a).

⁴ 47 U.S.C. § 161(b).

⁵ Staff Report at para. 54.

⁶ H.R. 3850, 106th Cong., 2d Sess. (2000) (as passed by the House of Representatives, Oct. 3, 2000).

placed on the Commission's resources by a steady stream of large telecommunications mergers, section 271 applications, the continued demands of access charge and universal service reform, and other high-profile proceedings. ITTA is concerned that, absent substantial regulatory relief for midsize carriers, its members will continue to face long regulatory delays while the Commission attends to these other regulatory proceedings.

ITTA specifically supports the Staff Report's recommendation that the Commission undertake further reform of its accounting and reporting requirements contained in Parts 43 and 64, and looks forward to continuing to work with the Commission on this important issue.⁷ In addition to the rules targeted for review in the Staff Report, ITTA proposes that the Commission streamline the following rules:

- (1) Part 32, the Uniform System of Accounts;
- (2) Part 43, ARMIS reporting, as it applies to midsize carriers;
- (3) Part 64, Subpart I, Section 64.903, requiring the filing of Cost Allocation Manuals, as it applies to midsize carriers;
- (4) Section 20.20, the LEC-CMRS separate affiliate rule;
- (5) Part 64, Subpart T, the LEC-IX separate affiliate rules;
- (6) Part 64, Subpart K, on subscriber preferred carrier changes, as those rules apply to sales of local exchange or interexchange assets;
- (7) The Commission's Study Area Freeze, contained in the definition of "Study Area" in Part 36, Appendix;
- (8) Parts 61 and 69, as they apply to rate-of-return carriers; and
- (9) Parts 36 and 54, as they apply to rural carriers.

In addition to this Biennial Review effort, ITTA encourages the Commission to proceed with meaningful reform of rate regulation for rate-of-return carriers. Although the Staff Report recommends no new Part 69 initiatives at this time, growing competition in the service areas of ITTA members regulated under rate-of-return regulation is making the current rate-of-

⁷ Staff Report at 80, 111.

return rules increasingly unsustainable. ITTA urges the Commission to proceed rapidly with reform in this area, including rule changes (1) to reform rate-of-return access charge rules, including adoption of pricing flexibility for carriers that face competition; (2) to facilitate the election of price caps by more carriers; and (3) to reform high cost universal service support mechanisms for rural carriers.

II. ITTA Supports Certain Biennial Review Proposals and Suggests Further Action

A. Part 32 – Uniform System of Accounts

Part 43 – Reports of Communications Common Carriers and Certain Affiliates

Part 64, Subpart I – Allocation of Costs

ITTA strongly supports the Staff Report's recommendation, and the Commission's ongoing efforts, to streamline its accounting and reporting requirements contained in Parts 32, 43, and 64. Compliance with these regulations is extremely costly, particularly for midsize carriers that have relatively small customer bases. Contrary to the assertion in the Staff Report,⁸ many states prescribe their own filing requirements for cost allocation manuals (CAMs) and ARMIS-type information, making the FCC's requirements duplicative and burdensome.

ITTA supports the Commission's recent and ongoing efforts to offer midsize companies relief from Class A accounting requirements and simplify CAM filings,⁹ streamline the USOA, particularly the expense matrix filing requirement,¹⁰ and simplify ARMIS reporting.¹¹ The Staff Report correctly concludes that "Part 32 may impose more burdensome information requirements on incumbent LECs than needed in light of the changing competitive landscape."¹² In this regard, ITTA notes with enthusiasm that the Commission has placed a Notice of Proposed Rulemaking commencing Phases II and III of its Comprehensive Accounting Review on the Agenda for its October 12, 2000 Open Meeting.¹³

⁸ Staff Report at para. 35.

⁹ *1998 Biennial Regulatory Review – Review of Accounting and Cost Allocation Requirements*, Report and Order in CC Docket No. 98-81, Order on Reconsideration in CC Docket No. 96-150, and Fourth Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11396 (1999).

¹⁰ *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I*, CC Docket No. 99-253, Report and Order, FCC 00-78 (rel. Mar. 8, 2000).

¹¹ *1998 Biennial Regulatory Review – Review of ARMIS Reporting Requirements*, CC Docket No. 98-117, Report and Order in CC Docket No. 98-117 and Fifth Memorandum Opinion and Order in AAD File No. 98-43 (rel. June 30, 1999).

¹² Staff Report at 71-72.

¹³ Public Notice, FCC to Hold Open Commission Meeting Thursday, October 12, 2000 (rel. October 5, 2000).

The Commission's CAM filing and ARMIS reporting requirements, as applied to midsize carriers, fits squarely within the section 11 criteria. CAMs, detailing the way in which carriers comply with the Commission's cost allocation rules, and ARMIS reports, detailing local exchange expenses, investment, and revenues, are filed by LECs that exceed a prescribed indexed annual revenue threshold. Several midsize carriers have become subject to these requirements through regulatory "bracket creep" as their overall revenues – but not necessarily their local exchange revenues – have grown to exceed the threshold. These filings are costly, burdensome, incomplete, and unnecessary.

As currently structured, the information the Commission receives from midsize LECs is incomplete and, accordingly, is not useful to the Commission.¹⁴ Only a handful of midsize LECs must file this information and, for them and their customers, the filing is a costly proposition. One ITTA member has estimated that the labor cost alone involved with preparing the Commission's ARMIS filing exceeds \$272,000, or over \$2.00 per year per access line for its customers.¹⁵ This figure is in addition to the costs of CAM preparation, and specially-designed accounting software that captures accounting data in the format ARMIS requires.

ITTA recommends, therefore, in addition to the Commission's efforts to streamline the USOA itself, that the Commission substantially raise the indexed revenue threshold that triggers the CAM and ARMIS filing requirement to exclude midsize ILECs. These filing requirements have no impact on these carriers' underlying obligation to comply with the Commission's cost accounting and cost allocation rules, but their elimination will represent great strides to eliminate unnecessary, but costly, regulations that unnecessarily increase rates to midsize company customers.

¹⁴ *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, FCC 97-159, 12 FCC Rcd 16642, 16694 (1997) (subsequent history omitted).

¹⁵ United States Telephone Association, Petition for Rulemaking, 2000 Biennial Review, RM-9707, Comments of Roseville Telephone Company, at 4-5 (filed Nov. 15, 1999).

B. Part 20, Section 20.20 – Conditions Applicable to Provision of CMRS Service By Local Exchange Carriers

Part 64, Subpart T – Separate Affiliate Requirements for Incumbent Independent Local Exchange Carriers that Provide In-Region, Interstate Domestic Interexchange Services or In-Region International Interexchange Services

In 1997, over eighteen months after Congress passed the “procompetitive, deregulatory” Telecommunications Act of 1996, the Commission issued two orders that imposed on midsize LECs two new structural separation requirements that the Commission had never before considered necessary. In the first order, the Commission for the first time required midsize LECs that sought to provide in-region, interstate or international interexchange services to form a separate interexchange (IXC) affiliate.¹⁶ In the second order, the Commission for the first time required midsize LECs that sought to provide in-region commercial mobile radio service (CMRS) to form a separate CMRS affiliate.¹⁷ These new burdens that the Commission imposed on midsize LECs were not based on any historical evidence of anticompetitive or discriminatory conduct by midsize companies. Moreover, the Commission expressly found that midsize LECs did not exercise market power in the IXC market¹⁸ and that the CMRS market was characterized by increasing competition.¹⁹ The Commission nevertheless imposed structural

¹⁶ *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order* In CC Docket No. 96-149 and *Third Report And Order* In CC Docket No. 96-61, 12 FCC Rcd 15756 (1997) (*LEC Classification Order*), corrected, *Order on Reconsideration*, 12 FCC Rcd 8730 (1997) (*LEC Classification Reconsideration Order*).

¹⁷ *Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Report and Order*, 12 FCC Rcd 15668 (1997) (*LEC-CMRS Order*).

¹⁸ *LEC Classification Order*, 12 FCC Rcd at 15847 (¶ 157).

¹⁹ *LEC-CMRS Order*, 12 FCC Rcd at 15692 (¶ 36).

separation requirements on midsize LECs based on the mere perception that incumbent LECs had the potential to engage in anticompetitive or discriminatory conduct.²⁰

Over three years have passed since the Commission imposed LEC-IXC and LEC-CMRS separate affiliate requirements, and whatever usefulness those requirements ever had has long since passed. The interexchange market continues to be dominated by the “big three:” AT&T, MCI Worldcom, and Sprint. The CMRS market is also dominated by a few large players, primarily AT&T Wireless, Verizon Wireless, Cingular Wireless, Nextel Communications, and Sprint. In this environment, midsize LECs have enormous potential to become a vibrant new source of competition, both in the smaller urban and rural areas of the nation that midsize LECs have historically served and in the larger markets that may be adjacent to these areas.

Before midsize LECs can reach their full competitive potential, however, their regulatory burdens must be appropriately scaled so as not to place them at an artificial competitive disadvantage vis-à-vis other competitors in the market. ITTA is therefore disappointed that the Staff Report proposes no change to section 20.20 in the 2000 Biennial Review,²¹ and proposes a hopelessly complex and inadequate “triennial review” of the LEC-IXC separate affiliate rule contained in Part 64, Subpart T, Section 64.1903.²² Midsize ILECs desperately need immediate relief from both of these rules.

Particularly with respect to the LEC-IXC separate affiliate rule, the prohibition on joint ownership of switching and transmission facilities artificially dictates investment and purchasing decisions by ILECs. Telecommunications equipment vendors are now selling

²⁰ See *LEC Classification Order*, 12 FCC Rcd at 15848-49; *LEC-CMRS Order*, 12 FCC Rcd at 15692.

²¹ Staff Report at 34.

²² Staff Report at 130.

switching equipment that combines local and long-distance switching capability. Competitors are free to take advantage of the economies to be gained from this multi-use equipment in ways that independent ILECs are not. Particularly given that independent ILECs often have relatively low interexchange traffic volumes (as a result of the national marketing of services offered by the “Big Three” IXC), this type of switching equipment is ideally suited to the needs of midsize ILECs. At least one ITTA member would be purchasing such a switch, but for the Commission’s separate affiliate rule.

The LEC-IXC separate affiliate requirement prescribed for the BOCs by the Telecommunications Act of 1996 sunsets by its own terms three years after the BOC first gains approval to offer interLATA services, unless the Commission extends the requirement.²³ Given that, for the Nation’s largest four ILECs, the legal presumption exists that the requirement will sunset, it is difficult to fathom the Staff Report’s recommendation that a triennial review for independent ILECs should occur. The Staff Report enunciates no particular standards on which this review would be based and makes no effort to distinguish the “triennial” review from the Biennial Review already required by Section 11. Furthermore, contrary to the standard contained in Section 272(f)(1), the burden apparently would be placed on the independent LECs to justify the lifting of the requirement.

Section 272(f)(1) provides an appropriate standard – three years after the LEC is first subject to the IX separate affiliate requirement, the requirement presumptively should be lifted. The Commission imposed the separation requirements of Part 64, Subpart T three years ago, in 1997. The requirement, therefore, should be immediately lifted. *There is no further*

²³ 47 U.S.C. § 272(f)(1).

justification for subjecting independent ILECs to *greater* regulatory burdens than are placed on the four remaining Bell Companies.

The LEC-CMRS Separate Affiliate Rule is equally difficult to justify.²⁴ Prior to 1997, “there were few, if any, complaints lodged by unaffiliated CMRS carriers against mid-size LECs relating to improper cross-subsidization or discriminatory interconnection.”²⁵ Moreover, “no unaffiliated CMRS carriers filed comments raising these concerns about mid-size LECs if the separate affiliate requirement were to be lifted by the Commission.”²⁶

The Staff Report justifies retention of both of these rules as a means to prevent incumbent LECs from exercising market power over the provision of in-region interexchange services and CMRS. Structural separation, however, does not prevent the exercise of market power; it merely facilitates detection of anticompetitive activities. In this regard, the Commission has already found that nonstructural safeguards, including accounting and cost allocation rules, can also provide effective, but less burdensome, protection.²⁷ Even the Staff Report itself concludes that “the part 32 USOA acts as a nonstructural safeguard to prevent an incumbent LEC from exercising its market power.”²⁸

²⁴ Although this rule sunsets on January 1, 2002, competitive conditions and market forces make it inappropriate for the Commission to delay repeal of this rule until then.

²⁵ *LEC-CMRS Reconsideration Order*, Concurring Statement of Commissioner Susan Ness, at 2.

²⁶ *Id.*

²⁷ *E.g.*, 47 C.F.R. § 64.702; *Amendment of Section 64.702 of the Commission's Rules and Regulations*, Report and Order, 104 FCC2d 958 (1986), *vacated sub nom. California v. FCC*, 905 F.2d 1217(9th Cir. 1990), *on remand*, *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, Report and Order, 6 FCC Rcd 7571 (1991), *aff'd in part and vacated in part sub nom. California v. FCC*, 39 F.3d 919 (1994), *on remand*, *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, Notice of Proposed Rulemaking, 10 FCC Rcd 8360 (1995).

²⁸ Staff Report at 70.

Given the lack of a compelling justification for these separate affiliate rules, and the competitive harm they cause to midsize ILECs, ITTA urges the Commission to repeal both rules as part of its 2000 Biennial Review.

C. Part 64, Subpart K – Changing Long Distance Service

ITTA is disappointed that the Staff Report proposes no change to its subscriber carrier selection, or “slamming” rules, as part of the 2000 Biennial Review.²⁹ The Commission today receives a steady stream of applications for waiver of these rules in connection with the sale or purchase of local exchange and interexchange carriers or assets, often as a result of bankruptcy or voluntary or Commission-ordered divestiture of assets. While the Commission’s slamming rules have many laudable goals that ITTA wholeheartedly supports, there is no serious contention in any quarter that the rules were intended to apply to such circumstances.

The Commission’s staff has now developed a well-defined set of criteria that carriers generally must meet to justify a waiver of the slamming rules in the context of corporate transactions involving the sale or purchase of local exchange or interexchange assets.³⁰ Given that Section 11 requires the Commission to repeal *or modify* any rule to which it applies when its Biennial Review indicates that the rule is no longer in the public interest, ITTA believes that the Commission take this opportunity to codify the application of the slamming rules in the transactional context.

If the Commission chooses not to treat this issue as part of its Biennial Review, ITTA nevertheless urges the Commission to issue a further Notice of Proposed Rulemaking in CC Docket No. 94-129 to accomplish a similar result.

²⁹ Staff Report at 115.

³⁰ *E.g., Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, McLeodUSA Telecommunications Services, Inc. Petition for Waiver, Order, DA 00-2151 (Com. Car. Bur., Acc’g Pol. Div., rel. Sept. 21, 2000) (approving waiver where Petitioner agreed to undertake a two-step process to notify the affected customers of the transfer. In a first letter, Petitioner agreed to (1) inform customers of the proposed transfer and assure them that no charges or rate increases will be imposed as a result of the transfer; (2) advise the affected customers that they may choose a different preferred carrier, and that, if they decide to do so within 30 days of the transfer date, Petitioner would reimburse them for carrier change charges, if any are imposed by their local exchange carriers; and (3) provide a toll-free number for customers to call with any questions they may have about the transition. Once the transfer is consummated, Petitioner agreed to notify customers of that event and reiterate the foregoing information, assurances, and advice.)

D. Part 36 – Jurisdictional Separations

Part 54 – Universal Service

Part 61 – Tariffs

Part 69 – Access Charges

Interstate access charge reform for rate-of-return-carriers and universal service reform for rural carriers is vitally needed. Although proceedings to address these issues are underway at the Commission, progress since 1996 has been slow at best. These regulatory structures must be updated to reflect the advent of competition. The Telecommunications Act of 1996 recognized that the system of implicit support embodied in the then-existing interstate access charge rate structures and universal service support mechanisms could not long survive under the new competitive paradigm. Moreover, it was anticipated in 1996 that, facing competition, ILECs and their customers alike would benefit from increased pricing flexibility. The Commission, however, has made little to no progress since 1996 to update these regulations for rate-of-return companies. As a result, Alaska Communications Systems, Inc. (ACS), labors under a substantial handicap, despite the fact that one hundred percent of its Anchorage market is subject to actual residential and business competition from two competitors – AT&T and General Communication, Inc. (GCI). No other ILEC in the country faces this level of competition, yet ACS cannot take advantage of even the most basic forms of pricing flexibility and streamlined tariffing that larger, price cap carriers already enjoy.

ITTA, therefore, views with concern the Staff Report's recommendation that no further new initiatives be launched at this time. Given this recommendation, ITTA urges the Commission to move forward with proceedings already underway that would provide relief for rate-of-return and rural carriers in these areas. Specifically, the Commission should:

Give careful consideration to the Multi-Association Group (MAG) Plan when it is presented to the Commission. Although ITTA has not participated directly in the development of the MAG Plan, much careful analysis has gone into its creation, and ITTA believes that many components of the proposal will merit serious consideration.

Move quickly on the universal service recommendations of the Rural Task Force. These recommendations represent an important landmark in the reform of universal service for rural carriers.

Re-examine the price cap and pooling all-or-nothing rules. Two carriers – Verizon-Puerto Rico Telephone Company and ALLTEL-Aliant, are currently operating under limited waivers of the price cap all-or-nothing rule, making it vital that the Commission take action on this rule within about eight months. In addition, the price cap and pooling all-or-nothing rules needlessly deny many consumers the benefits of price cap regulation.

Create transitional regulatory structures that facilitate the move from rate-of-return to price cap regulation, as modified by the CALLS rules. As currently structured, the price cap rules (1) establish traffic-sensitive target rates that are too low for many carriers that are currently regulated under rate-of-return regulation; (2) establish a glidepath that is too steep, in that it is determined by a "one-size-fits-all 'x'-factor" of 6.5 percent; and (3) provide no clear avenue for midsize carriers to elect price caps because the Interstate Access Universal Service Fund is fixed in size at \$650 million. These issues all must be addressed before additional carriers can elect price cap regulation.

Permit study area boundary changes in the context of sales and purchases of exchanges. The Commission froze study area boundaries in 1984 in order to establish some control over a process it perceived had the potential to destabilize then-existing universal service

mechanisms. As non-rural carriers have migrated to a universal service support mechanism that is not based on their actual costs, and the burden of universal service funding has been distributed over a larger universe of contributors, these concerns have receded. Furthermore, the Commission has frozen universal service support levels in two ways: (1) by imposing an indexed cap on rural carrier high cost loop support; and (2) by freezing universal service support levels provided to a purchaser of exchanges at the levels the seller was receiving.³¹ As a result of these factors, the analysis that accompanies the vast majority of study area waivers is routine and non-controversial in nature because the underlying transactions simply have no impact on universal service support. ITTA, therefore, urges the Commission to modify its rules to eliminate the need for study area waivers in connection with a sale or purchase of local exchange properties.

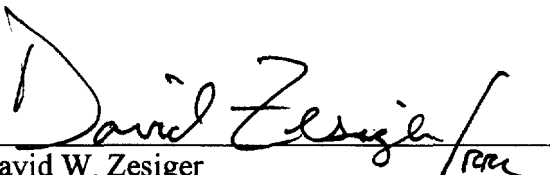
³¹ 47 C.F.R. § 54.305.

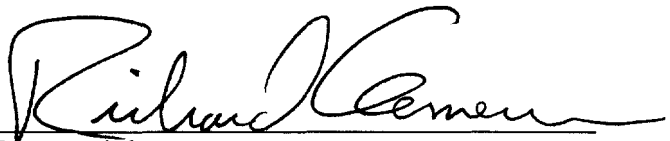
III. Conclusion

ITTA appreciates this opportunity to participate as the Commission develops specific proposals for its 2000 Biennial Review. ITTA looks forward to working with the Commission as it prepares specific rulemaking proposals to ensure that the Biennial Review process generates much-needed regulatory relief for midsize carriers. For the reasons stated above, ITTA supports the specific proposals in the Staff Report, to the extent indicated, and urges the Commission to take further action.

Respectfully submitted,

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